

## COOK COUNTY SHERIFF'S MERIT BOARD

Sheriff of Cook County )  
                          )  
                          )  
vs.                     )  
                          )  
Correctional Officer )  
Montell J. Griffin    )  
Star # 16514          )

Docket No. 1927

### DECISION

This matter coming on to be heard pursuant to notice before James P. Nally, Board Member, on September 22, 2017, the Cook County Sheriff's Merit Board finds as follows:

#### Jurisdiction

Montell J. Griffin, hereinafter Respondent, was appointed a Correctional Officer on August 30, 2010. Respondent's position as a Correctional Officer involves duties and responsibilities to the public; each member of the Cook County Sheriff's Merit Board, hereinafter Board, has been duly appointed to serve as a member of the Board pursuant to confirmation by the Cook County Board of Commissioners, State of Illinois, to sit for a stated term; the Board has jurisdiction of the subject matter of the parties in accordance with 55 ILCS 5/3-7001, *et seq*; and the Respondent was served with a copy of the Complaint and notice of hearing and appeared before the Board with counsel to contest the charges contained in the Complaint.

As a threshold matter, a proceeding before the Merit Board is initiated at the time the Sheriff files a written charge with the Merit Board. 55 ILCS 5/3-7012. A document is considered filed, in this case with the Merit Board, "when it is deposited with and passes into the exclusive control and custody of the [Merit Board administrative staff], who understandingly receives the same in order that it may become a part of the permanent records of his office." See *Dooley v. James A. Dooley Associates Employees Retirement Plan*, 100 Ill.App.3d 389, 395 (1981)(quoting *Gietl v. Commissioners of Drainage District No. One*, 384 Ill. 499, 501-502 (1943) and citing *Hamilton v. Beardslee*, 51 Ill. 478 (1869)); accord *People ex rel. Pignatelli v. Ward*, 404 Ill. 240, 245 (1949); *in re Annex Certain Terr. To the Village of Lemont*, 2017 IL App (1<sup>st</sup>) 170941, ¶ 18; *Illinois State Toll Highway Authority v. Marathon Oil Co.*, Ill. App. 3d 836 (1990) ("A 'filing' implies delivery of a document to the appropriate party with the intent of having such document kept on file by that party in the appropriate place." (quoting *Sherman v. Board of Fire & Police Commissioners*, 111 Ill. App. 3d 1001, 1007 (1982))); *Hawkyard v. Suttle*, 188 Ill. App. 168, 171 (1914 ("A paper is considered filed when it is delivered to the clerk for that purpose.")).

The original Complaint in this matter was filed with the Merit Board's administrative staff on March 26, 2016. Regardless of whether or not Merit Board Members were properly appointed

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during a given term, the Merit Board, as a quasi-judicial body and statutorily created legal entity, maintained at all times a clerical staff not unlike the Clerk of the Circuit Court ("Administrative Staff"). These Administrative Staff members receive and date stamp complaints, open a case file, assign a case number, and perform all of the functions typically handled by the circuit clerk's office. Just as a timely filed complaint would be accepted by the circuit clerk even if there were no properly appointed judges sitting on that particular day, so too was the instant Complaint with the Administrative Staff of the Merit Board. Accordingly, the Complaint filed on August 29, 2016 commenced the instant action, was properly filed, and will be accepted as the controlling document for calculating time in this case.

**Findings of Fact**

The Sheriff filed a complaint August 29, 2016. The Sheriff is requesting termination of the Respondent. In the complaint, the Sheriff alleges that the Respondent on April 24, 2015 used excessive force against detainee [REDACTED]. The complaint also alleges that the Respondent filed false reports regarding the incident and provided false statements to investigators from the Office of Professional Review.

The complaint alleges violations of Sheriff's Order 11.2.1.0, Sheriff's Order 11.2.2.0, Sheriff's Order 11.2.20.1, Gen. Order 24.9.1.0, and Merit Board Rules and Regulations Article X, paragraph B.

[REDACTED] testified he is assigned to the Video Management Unit and has been for the last 15 months and his duties are to oversee the day to day operations of the Video Management Unit. (R. 9, 10) He is responsible for downloading the incidents as identified by the CCOMS Unit. (R. 10) He is responsible for the surveillance video that is taken in the Department of Corrections. (R. 10) These videos are kept in the normal course of business. (R. 10) His unit works with other areas of the Sheriff's Office to identify video that might need to be retained as well as going through incident reports to match up with videos. (R. 11) They are required to retain any use of force incident, any contact or general disciplinary type actions. They will download to a disc and safe them. (R. 11) There is documentation of chain of custody regarding the work that they do to identify and retain videos. (R. 12) Sheriff's Exhibit 1 of chain of custody for the video and verification of the incident which was admitted into evidence without objection. (R. 13) Whenever a video is downloaded this type of form is completed by one of his staff to ensure chain of custody. (R. 14) The date of the incident is 4/24/15 and the personnel involved was Respondent Griffin. (R. 15) The report indicates that all the cameras that were picking up the footage that the investigators were looking for were working properly. (R. 18)

Sheriff's Exhibit 2 is marked identifying the two CDs that were downloaded. (R. 18) Over the objection of the Respondent, Exhibit 1 was admitted. (R. 33) Previous Sheriff's Exhibits 2A and 2B were also admitted into evidence over Respondent's objection. (R. 35)

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Investigator [REDACTED] testified he is employed with the Cook County Sheriff's Office of Professional Review and has been there approximately two years at the time of the hearing and his job responsibilities are to conduct investigations on employee misconduct throughout the Department. (R. 37) Previous to working with OPR he was a correctional officer for approximately 9 years. (R. 38) In 2015 he conducted an investigation of excessive force by Respondent Griffin. (R. 38) This was assigned to him randomly by his supervisor after a complaint was initiated by Commander [REDACTED] from Division 9. (R. 39) It was initiated by Internal Affairs Inspector General Complaint register which is a sworn affidavit. (R. 41) This document was signed by Commander [REDACTED] and was notarized. (R. 41) The purpose of the Complaint register is to notify OPR of an incident and put in a complaint against an employee based on their observations of misconduct. (R. 42) Complaint registers are generally made and kept in the course of regularly conducted business activity by the Sheriff. (R. 43) Exhibit 3 was entered into evidence over the objection of the Respondent. (R. 44) The Complaint register recites that the Respondent initiated the incident by lunging at the inmate and striking the inmate with two closed hand fists. The incident could have been avoided if the officer had retreated to the interlock and called a supervisor. (R. 44, 45) Investigator [REDACTED]'s investigation entailed him reviewing Commander [REDACTED]'s report, collecting video, reviewing the video and then making notifications to the Respondent and other witnesses and interviewing all of them. (R. 45) He further reviewed incident reports and disciplinary reports as well as use of force reports. (R. 45) Sheriff's Exhibit 4 is a summary report synopsis of the investigation. (R. 46) The report was completed by Investigator [REDACTED] on January 25, 2016 and that it is the date he turned in and closed his case. (R. 47) He considered any mitigating or aggravating factors in his report and he fully reviewed the video during his investigation. (R. 51) After reviewing the video he concluded that Respondent Griffin used excessive force against detainee [REDACTED] by striking him twice in the head or face. (R. 52) Investigator [REDACTED] testified that the video clearly shows that Respondent Griffin was escorting behind detainee [REDACTED] going down the stairs which they both make it down and there is an exchange of words between them both. (R. 52-53) Respondent Griffin turns around to walk away and then the detainee did take one step forward at the time Respondent Griffin turned around and then advanced toward the detainee, fake lunge and struck him twice in the head or face. (R. 53, 54) After reviewing the video he testified what Respondent Griffin should have done after being verbally engaged with the detainee, Respondent should have continued either verbal commands ordering him to sit down in the dayroom seat and he should have notified backup and called for a supervisor. (R. 54, 55) The detainee complained of a hurt eye after the incident and needing an ice pack. (R. 55) Sheriff's Exhibit 5 was marked which is the medical history of the detainee. (R. 57) This report indicates that the detainee complained of his face hurting, his right eyelid being swollen. (R. 57, 58) The investigator reviewed the incident report, the Cook County Sheriff's Office response to the use of force report as well as the Cook County Sheriff's inmate disciplinary report. (R. 80) Exhibit 6 was marked as the Sheriff's Office inmate disciplinary report which was drafted by Respondent Griffin. (R. 80) Sheriff's Exhibit 6 was admitted into evidence again over the objection of the Respondent. (R. 81, 82)

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The investigator testified to the narrative provided by Respondent Griffin in which he stated that the detainee was verbally abusing him and attempted to spit over his shoulder almost hitting the Respondent that when they got to the bottom of the stairs, the detainee said he was going to whip his ass, the detainee put his belongings on the table, pulled his pants up and took a fighting stance and threatened the Respondent. (R. 82-83)

Investigator [REDACTED] said the reasons the Respondent was not truthful is that the video does not show him being spit on on the steps, and the detainee is not shown taking a fighting stance. (R. 84, 85) In addition there is also no evidence of the detainee flailing his hands and threatening the Respondent. (R. 85) Sheriff Exhibit 7 is the Cook County Sheriff's Office IT incident report from the CCOMS and it was admitted into evidence without objection. (R. 85-86) In the Statement of Facts Exhibit 7 Investigator [REDACTED] did not find the recitation by the Respondent to be credible for the same reasons as previously stated that there is no evidence on the video of the detainee spitting and there is no reaction from the Respondent. (R. 87) The video shows that the reaction by the Respondent is only in response to a verbal conversation and no threats or physical activity. (R. 87) Investigator [REDACTED] testified regarding the importance of the documentation when there is an incident on the tier and they are expecting the officers to be truthful when they fill out these reports. (R. 88) Sheriff's Exhibit 8 is the Cook County Sheriff's Office response to resistance of force filled out by the Respondent. (R. 88, 89) Exhibit 8 was moved into evidence without objection. (R. 89) This document was reviewed and relied upon by the investigator. He again did not find the narrative on this document to be truthful by the Respondent for the same reasons as previously stated. (R. 90, 91) Investigator [REDACTED] also interviewed inmate [REDACTED], Correctional Officer [REDACTED] and the Respondent Griffin. (R. 91) Exhibit 9 is the Sheriff's Office of Professional Review order to appear letter and the Respondent was given all the proper notifications and administrative rights. (R. 92, 94) Exhibits 9 and 10 were admitted into evidence. (R. 93, 94) Respondent signed all the proper documentation that he understood and would abide by the administrative rights. (R. 96, 97) Respondent had no questions regarding the allegations against him. (R. 98) The interview with the Respondent is recorded and a copy of the recording was provided to the Respondent. (R. 99-100) The audio recording of the interview was admitted into evidence. (R. 102) Investigator [REDACTED] authenticated the interview after reviewing it during the hearing and Exhibit 13 was moved into evidence. (R. 106) Investigator [REDACTED] did not find the Respondent's explanation of the incident during his interview with OPR to be credible for the same reasons as he has previously testified to. (R. 107) At the close of his investigator he found that there was excessive force that was used by Respondent and that he was less than truthful in his reports to OPR and that he was guilty of conduct unbecoming of an officer. (R. 108) He further found that Respondent Griffin had violated the General Orders of the Sheriff and Merit Board Rules which are outlined in Exhibit 14. (R. 108) Exhibit 14, the Rules and Regulations of the Sheriff's Office was moved into evidence. (R. 109) He found that the Respondent had violated additional sections of the Cook County Sheriff's Office Merit Board Rules including Section X prohibiting restricted acts as well as Sheriff's Order 11.2.2.0.1 all outlined in Sheriff's Exhibit 15 which was admitted into

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evidence. (R. 110, 111) Exhibit 16 outlining additional Merit Board Rules and Cook County Sheriff's Office General Orders that were moved into evidence. (R. 112, 113) Exhibit 17 was Sheriff's General Order regarding reporting incidents and they investigator believes that Respondent violated this policy as well as was moved into evidence. (R. 114) Exhibit 18 is a copy of 11.2.2.0 which is the response to resistance of use which was moved into evidence. (R. 115)

[REDACTED] had special training prior to joining OPR as he was part of the ART unit which is Administrative Relief Team and moved all over the county for different assignments to learn the many different divisions. (R. 118) The witness stated the only time the detainee lashed out at the officers was after he was hit in the face by Respondent Griffin and he was defending himself and he had already been struck twice. (R. 127, 128) He believed Respondent violated the incident report writing rules because he was not accurate or truthful of what actually occurred in the incident, (R. 132) and his narrative is completely contradictory to the video evidence. (R. 132) He stated detainee only became physically aggressive after Respondent Griffin struck him twice in the face and head. (R. 135) The video clearly does not show any reaction by Respondent Griffin to the alleged spit by the detainee. (R. 135) Investigator [REDACTED] believes that the Respondent lied about the spitting incident. (R. 136) Investigator [REDACTED] testified that just because the detainee has a previous history regarding his criminal background does not mean that the rules change for the Respondent or any other officer. (R. 151) Exhibit 19 the full investigative report of Investigator [REDACTED] was moved into evidence. (R. 161)

[REDACTED] a felon convicted of aggravated battery on a peace officer in another case, testified he was involved in an incident with Respondent on April 24, 2015 in Division 9. (R. 62, 63) He stated he never spit, nor did he ever lunge at Respondent Griffin. (R. 63) He said only took a fighting stance after the Respondent took a swing at him and rushed him into a headlock. (R. 63) He never flailed his arms and never made any threatening moves to the Respondent. (R. 63) He never threw any punches until he was hit by Respondent Griffin. (R. 63) His said his mouth was bleeding and his lip was swollen and sore. (R. 63, 64) He testified that he did not swing at any officers but he did try to protect himself. (R. 70) [REDACTED] said he did not throw water nor did he punch first regarding Respondent Griffin. (R. 76)

Officer [REDACTED] testified he has been with the Cook County Sheriff's Department for 20 years. (R. 162) He was working on April 24, 2015 and there was an incident with detainee [REDACTED] (R. 163) He testified that was the detainee who came at Respondent Griffin at the bottom of the stairs. (R. 169) He admits that as a correctional officer is not allowed to use physical force when an inmate is verbally abusive. (R. 171) He doesn't know who threw the first punch in the altercation. (R. 172)

Respondent Montell Griffin said he was working April 24, 2015 and at that point he had been a correctional officer for 5-1/2 years. (R. 174) Respondent Griffin stated that the detainee spit at him over his shoulder on the stairway. (R. 180) He stated that as he turned to walk away he saw the detainee out of the corner of his eye come forward and he felt

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threatened. (R. 181) He stated he was only defending himself. (R. 181) The Respondent said that the tape that was shown at the hearing accurately describes the incident. (R. 188, 189)

He stated that he struck detainee [REDACTED] with two closed hand strikes. (R. 189) He did not put in his reports detainee put a fighting stance. (R. 190) He said there was a "like seconds" time delay between the time he picked up his pants and "stepped to him." (R. 190) He admits that he faked a lunge toward the detainee. (R. 190) He testified that the flailing of the arms comment was that he was putting his bag down and picked up his pants and that the flailing does not mean swinging. (R. 190) He admits his report may be mistaken because the flailing of the arms supposedly took place after he had put his belongings down and pulled up his pants. (R. 191) He stated that the detainee's hands were down at his side when the Respondent struck him the face. (R. 191) The Respondent testified that even though he felt threatened he did not call over Officer [REDACTED] to help him. (R. 193) The Respondent demonstrated what he thought happened regarding the detainee's positioning. (R. 190)

### **Conclusion**

Based upon the evidence presented, and after assessing the credibility of witnesses and the weight given by the evidence in the record, the Board finds that the Respondent did violate Sheriff's Order 11.2.1.0, Sheriff's Order 11.2.2.0, Sheriff's Order 11.2.20.1, Gen. Order 24.9.1.0, and Merit Board Rules and Regulations Article X, paragraph B.

The evidence shows that Respondent used excessive force under the totality of the circumstances. The video evidence provides views from different camera angles. It shows the Respondent and the detainee coming down the stairs after the detainee had been released from his cell by Respondent. While the detainee turns his head back towards Respondent on the stairs, the video does not show evidence that he spit at the Respondent, and the Respondent does not react as if he had been spat upon. Subsequently, when they reach the main floor, the Respondent puts his possessions on a table and hikes his pants. While it appears, words are exchanged between the Respondent and the detainee, there is still considerable distance between the detainee and Respondent and the detainee does not appear to invade the personal space of the Respondent. The Respondent moves towards detainee [REDACTED] and delivers closed fist strikes. The actions of the Respondent were outside the parameters of the Sheriff's orders and the regulations governing conduct of employees such as the Respondent.

### **Order**

Wherefore, based on the foregoing, it is hereby ordered that the Merit Board finds Respondent Montell J. Griffin did violate the orders and rules and regulations as charged and is separated from service effective August 29, 2016.

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[REDACTED]  
James P. Nally, Chairman

[REDACTED]  
John Dalicandro, Secretary

[REDACTED]  
Vincent T. Winters, Board Member

[REDACTED]  
Patrick M. Brady , Board Member

[REDACTED]  
Byron Brazier, Vice-Chairman

[REDACTED]  
Kim R . Widup, Board Member

[REDACTED]  
Juan L. Baltierres, Board Member

[REDACTED]  
Kimberly Pate Godden, Board Member

Date July 8, 2019